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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re S.V., a Person Coming Under the
Juvenile Court Law.

B203676
(Los Angeles County
Super. Ct. No. CK69679)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

O.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Anthony Trenacosta, Commissioner. Affirmed.

Cameryn Schmidt, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

After jurisdictional and dispositional hearings, the juvenile court removed S.V. (minor) from the custody of O.L. (mother) and granted mother monitored visitation. Mother appeals. According to mother, the juvenile court lack subject matter jurisdiction to enter permanent custody orders pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (Act) (Fam. Code, § 3400 et seq.)¹ because the minor was in California on vacation, her home state is Texas, and Texas never declined jurisdiction on the grounds that California is a more convenient forum. In mother's view, the juvenile court, at most, had temporary emergency jurisdiction.

We find no error and affirm.

FACTS

Background

In August 2007, the minor, mother and minor's stepfather drove from their home in Texas to visit his relatives in Paramount, California. The Department of Children and Family Services (Department) took the minor into protective custody after stepfather punched and slapped her.

The Department filed a petition on the minor's behalf pursuant to Welfare and Institutions Code section 300. It alleged, inter alia, that the minor was at risk of physical and sexual abuse from stepfather.

At the detention hearing, the juvenile court found a prima facie case for detaining the minor. The Department was awarded temporary custody pending disposition or further order.

The motion to stay or dismiss

Mother filed a motion to dismiss, arguing that the juvenile court lacked jurisdiction under the Act. (§ 3400 et seq.) She argued: The juvenile court has emergency jurisdiction to enter temporary orders under the Act, but it does not have jurisdiction for purposes of adjudication and disposition. Under section 3421, California can exercise jurisdiction and make custody determinations only if the minor's home state,

¹ All further statutory references are to the Family Code unless otherwise indicated.

Texas, either lacked or declined jurisdiction. Regardless, California should decline jurisdiction because Texas is a more convenient forum.

At the ensuing hearing, the Department's attorney argued that the juvenile court had jurisdiction under two of the three grounds set forth in Welfare and Institutions Code section 327.² The juvenile court stated: "[T]he [juvenile] court's going to deny the motion as previously indicated on at least two of the prongs, two of the three grounds for jurisdiction. Whether this is the most appropriate forum may be a matter of discussion. But this case is here, it was started here, and the [minor] was found here. . . . At least some of the acts alleged . . . occurred in Los Angeles County or in California. [¶] This case came in August 27. The motion came in on October 17. Even if I were to agree that it would be better in Texas, it's inappropriate now because the [minor is] entitled to have her case resolved as quickly as possible so she can move on towards either dismissal of the case or services."

Adjudication of the dependency petition

After the juvenile court received documentary evidence and heard testimony from several witnesses, it sustained the allegations that mother and stepfather physically abused the minor, stepfather sexually abused the minor, and mother failed to protect the minor. The juvenile court continued the disposition hearing and stated: "I am now going to contact the court in Texas to see if they'll assume jurisdiction in this case." The Department was instructed to contact its counterpart in Texas regarding placement.

Mother appealed.

² Welfare and Institutions Code section 327 provides: "Either the juvenile court in the county in which a minor resides or in the county where the minor is found or in the county in which the acts take place or the circumstances exist which are alleged to bring such minor within the provisions of Section 300, is the proper court to commence proceedings under this chapter."

Failed efforts to involve Texas in the case; disposition

At the initial disposition hearing, the juvenile court stated that the Department “hasn’t had much luck in getting [Texas] to take the case although, at this point, I don’t think it’s actually [an Act] matter any longer. [¶] I will contact the court in Texas, if counsel wishes, to see if they will take jurisdiction or if they have any suggestions as to how to proceed next.”

At the ensuing hearing, the juvenile court stated that it traded telephone calls with the Texas court and explained: “Specifically, what I need to know is if Texas . . . wishes to and is agreeable to accept supervision in this case. I need to know that there is a placement resource available for [the minor] in Texas. Because I do think that when all is said and done that reunification services are going to be better in Texas because of the visitation issues.” The juvenile court once again instructed the Department to contact its counterpart in Texas.

The hearing was continued again.

The Department reported: “On [January 9, 2008,] [the social worker] confirmed with Investigator, [Allison R.], of Texas Children’s Services, Dallas Office . . . that they are continuing to assess their role in this case. Per [Allison R.], she must contact the Dependency Court in Texas to confirm what role they can take in assisting with this case. As of the writing of this report, [the social worker] has not received any communication from [Allison R.]. . . . On [January 25, 2008,] [the social worker] contacted [the Department of Family and Protective Services (Texas CPS)] and was referred to [Ana F.], Program Director for Interstate Compacts . . . as to Texas CPS[’s] willingness to place [the minor] if the Texas court takes jurisdiction of this case. As of the writing of this report, [the social worker] has not received any type of communication from Texas CPS.”

At the disposition hearing on January 31, 2008, the juvenile court declared the minor a dependent. The minor was taken from mother’s custody and ordered into suitable placement. Mother was ordered to participate in parent education, individual counseling, anger management counseling, sex abuse counseling for nonoffending

parents, and conjoint counseling. Mother was given monitored visitation, which the Department could liberalize.

Mother filed a second appeal.

The appeals were consolidated.

STANDARD OF REVIEW

An appellate court independently determines the presence or absence of subject matter jurisdiction in a juvenile dependency proceeding. (*In re A.C.* (2005) 130 Cal.App.4th 854, 860.) The denial of a motion to stay or dismiss based on inconvenient forum is reviewed for an abuse of discretion. (*Pieri v. Superior Court* (1991) 1 Cal.App.4th 114, 121–122.)

DISCUSSION

Mother contends that the juvenile court lacked subject matter jurisdiction to do anything other than issue temporary custody orders under the Act because the minor is from Texas. Even if the juvenile court had subject matter jurisdiction, it abused its discretion by not staying the proceedings because Texas is a more appropriate forum. We parse these issues below.

1. The Act.

The Act “provides the exclusive method of determining subject matter jurisdiction in custody cases in California.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 310.) Section 3421, subdivision (a) provides that a state court can make a child custody determination if (1) the state is the home state of the child; (2) a court of another state does not have jurisdiction, or a court of a home state of the child has declined to exercise jurisdiction on the grounds that California is a more appropriate forum, but only if (a) the child and the child’s parents, or the child and at least one parent or person acting as a parent, have a significant connection with this state other than mere presence, and (b) there is substantial evidence available in this state concerning the child’s care, protection, training, and personal relationships; (3) all courts having jurisdiction under the preceding provisions have declined to exercise jurisdiction on the grounds that California is a more appropriate forum; or (4) no court of any other state would otherwise have jurisdiction under section

3421, subdivision (a). For purposes of the Act, a child's home state is the "state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." (§ 3402, subd. (g).)

2. At the outset, the juvenile court had temporary emergency jurisdiction.

A state court has temporary emergency jurisdiction over a child present in the state if the child has been abandoned or it is necessary to protect the child because the child is threatened with mistreatment or abuse. (§ 3424, subd. (a).) Further, "[i]f a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child." (§ 3424, subd. (b).) Commencement of a proceeding means the filing of the first pleading. (§ 3402, subd. (e).)

"The finding of an emergency is to be made only after an evidentiary hearing, although the juvenile court can detain the child before that hearing." (*In re A.C.*, *supra*, 130 Cal.App.4th at p. 864.) The risk of continuing sexual and physical abuse is considered an emergency. (*Ibid.*)

Here, the juvenile court did not hold an evidentiary hearing to determine if there was an emergency requiring it to exercise jurisdiction. But case law does not require it. Any evidentiary hearing can fit the bill. (*In re Nada R.* (2001) 89 Cal.App.4th 1166 (*Nada R.*) [after a juvenile court sustained a dependency petition and declared children dependents, the appellate court found that "there certainly was enough evidence for the [juvenile court] to assert emergency jurisdiction"].) Consequently, here, the adjudication of the dependency petition served as a section 3424 hearing. Further, the juvenile court's finding of physical and sexual abuse established an emergency. Because there was no evidence of custody determination or proceeding in Texas, emergency jurisdiction fell under section 3424, subdivision (b).

The resulting conundrum is this: What is the status of the juvenile court's orders? An emergency can exist "so long as the reasons underlying the dependency continue to

exist.” (*Nada R.*, *supra*, 89 Cal.App.4th at p. 1167.) On this record, at least the juvenile court continued to have jurisdiction under section 3424, subdivision (b). But could it make permanent orders? One case states that “[o]nce the [juvenile court] detained the children and declared them dependents of the [juvenile court], its temporary emergency jurisdiction ripened into permanent jurisdiction and California became their home state.” (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1140 [initial emergency jurisdiction arose under section 3424, subdivision (b)].)³ A second case, *In re Aaron D.* (2008) 165 Cal.App.4th 1546 (*Aaron D.*) [emergency jurisdiction arose under section 3424, subdivision (c)] took another tack based upon a different posture. It found the existence of emergency jurisdiction, directed the juvenile court to contact the Texas court that had made a prior custody determination and was hosting a pending custody proceeding, and then conditionally affirmed jurisdiction and disposition orders if Texas subsequently declined the case.

A hearing under Welfare and Institutions Code section 300 is different from a hearing under section 3424. The former is “a condition precedent to a permanent custody disposition under the dependency scheme” and the latter “is limited to a determination of the existence of an emergency, and under the Act emergency jurisdiction may be exercised to protect the child only on a temporary basis. [Citation.] Assumption of emergency jurisdiction does not confer upon the state exercising emergency jurisdiction the authority to make a permanent custody disposition. [Citation.]” (*In re C.T.* (2002) 100 Cal.App.4th 101, 108 (*In re C.T.*)). *In re C.T.* leads us to conclude that unless California gained jurisdiction to make permanent custody orders, the dispositional orders are suspect. It is to this issue we turn.

³ This statement appears to be dicta. The court assumed that the children had been in California for more than six months before the proceeding commenced and California was their home state.

3. The juvenile court gained permanent jurisdiction when Texas declined overtures to take the case and there was no indication from the parties that another state was a viable forum under the Act.

To determine whether the juvenile court had jurisdiction to enter permanent custody orders, we must interpret section 3421, subdivision (a).

Statutory interpretation, of course, is a question of law. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 683.) ““In construing a statute, our fundamental task is to ascertain the Legislature’s intent so as to effectuate the purpose of the statute. [Citation.] We begin with the language of the statute, giving the words their usual and ordinary meaning. [Citation.] The language must be construed “in the context of the statute as a whole and the overall statutory scheme, and we give ‘significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.’” [Citation.] In other words, ““we do not construe statutes in isolation, but rather read every statute “with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.” [Citation.]” [Citation.] If the statutory terms are ambiguous, we may examine extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we choose the construction that comports most closely with the Legislature’s apparent intent, endeavoring to promote rather than defeat the statute’s general purpose, and avoiding a construction that would lead to absurd consequences. [Citation.]’ [Citation.]” (*Estate of Garrett* (2008) 159 Cal.App.4th 831, 836.)

In our view, once the juvenile court contacted the Texas court about taking the case and it essentially failed to take a position, it implicitly declined jurisdiction on the grounds that California was a more convenient forum. Moreover, based on the record on appeal, it is clear that no state could claim jurisdiction based on section 3421, subdivision (a)(2). In other words, there was no state aside from Texas with a significant connection to the minor and mother or stepfather that possessed substantial evidence regarding the minor’s relationships and other pertinent facts. As a consequence, we conclude that the

juvenile court obtained jurisdiction to make permanent custody orders under section 3421, subdivision (a)(3).

The statutory scheme is ambiguous regarding how a home state and any other potential forum state must decline jurisdiction in order to confer jurisdiction under section 3421, subdivision (a)(3). There are two options. Either the other forums must decline jurisdiction by express order and make a finding that California is a more appropriate forum, or they can decline jurisdiction in any manner that conveys their intent. The latter interpretation is more reasonable. If other forums, being informed of a dependency proceeding in California, refuse to commit one way or another, the former interpretation would leave a child in emergency jurisdiction limbo. As a consequence, the child might be deprived of permanency, a result that is antithetical to the Act and our dependency scheme. To avoid this absurd result, we conclude that once other forums learn of a dependency proceeding in California and are asked to assume jurisdiction, their inaction is tantamount to a decision declining jurisdiction on the grounds that California is a more appropriate forum.

Mother contends that Texas's inaction cannot be construed as a decision to decline jurisdiction on the grounds that California is a more convenient forum. In support, she cites *Aaron D.* in her reply brief.

When a California juvenile court terminated the mother's parental rights in *Aaron D.*, she appealed based on lack of subject matter jurisdiction. Her children were from Texas and, at the time of the California proceeding, there was a Texas custody order as to one child and a pending Texas custody proceeding as to the other child. The appellate court held that the juvenile court only had emergency jurisdiction under section 3424, subdivision (c).⁴ As a result, the juvenile court should have contacted the Texas

⁴ Section 3424, subdivision (c) provides: "If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order

court as soon as it learned of the Texas custody proceedings, and definitely before entering a jurisdiction order. Because the juvenile court never contacted the Texas court, the appellate court directed the juvenile court to do so and stated: “All orders beginning with the jurisdiction order are affirmed on the condition that the Texas court declines jurisdiction in favor of California. In the event that the Texas court chooses to retain jurisdiction, the jurisdiction order and all subsequent orders are reversed.” (*Aaron D.*, *supra*, 165 Cal.App.4th at p. 1551.)

Aaron D. is distinguishable.

The *Aaron D.* court explained: “Here, there is nothing in the record to indicate that a Texas *court* ever declined jurisdiction or determined that California would be a more convenient forum under Family Code section 3421, subdivision (a)(2). [The San Bernardino Department of Children Services (DCS)] argues that Texas declined jurisdiction because Texas CPS did not file a dependency petition in Texas despite numerous referrals, and in fact closed an open referral once it found out that DCS had filed its petition in California juvenile court. However no Texas court ever declined jurisdiction, possibly because the California juvenile court did not communicate with the Texas court as required by Family Code section 3424, subdivision (d). Thus, California’s temporary jurisdiction over this case never ripened into permanent jurisdiction or jurisdiction to modify Texas’s child custody orders under Family Code section 3424.” (*Aaron D.*, *supra*, 165 Cal.App.4th at p. 1563.) The record mother presents is different. It establishes that the juvenile court did contact the Texas court regarding transfer of the case.

to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.” Section 3424, subdivision (d) provides that if a juvenile court is asked to make a custody determination and learns of a custody determination or proceeding in a court of another state, it must immediately communicate with that other court.

4. The juvenile court acted within its discretion when declined to stay the action based on inconvenient forum.

Mother contends that the juvenile court did not consider all the statutory factors when denying her motion to stay based on inconvenient forum. According to mother, this is grounds for reversal. In our view, the juvenile court ruled within the bounds of reason and must be affirmed.

A court with jurisdiction to make a child custody determination can decline to exercise its jurisdiction if it determines that it is inconvenient and another forum is a more appropriate. (§ 3427, subd. (a).) “Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including: [¶] (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child. [¶] (2) The length of time the child has resided outside this state. [¶] (3) The distance between the court in this state and the court in the state that would assume jurisdiction. [¶] (4) The degree of financial hardship to the parties in litigating in one forum over the other. [¶] (5) Any agreement of the parties as to which state should assume jurisdiction. [¶] (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child. [¶] (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence. [¶] (8) The familiarity of the court of each state with the facts and issues in the pending litigation.” (§ 3427, subd. (b).)

The juvenile court did not make express findings regarding these factors in its ruling. But it was not required to. And we presume that the juvenile court followed the law. (*Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 563.) There is no reason to believe that the factors were not considered. They were set forth in mother’s motion to stay or dismiss.

Mother cites *In re H.G.* (2006) 146 Cal.App.4th 1, 15–17 to support her argument for reversal. But that case is inapposite. It involved an adoptive placement. The juvenile

court made a statement indicating that it deferred to the placement agency's discretion and did not exercise its independent judgment to consider whether the placement was appropriate under Welfare and Institutions Code section 361.3. As a result, the juvenile court abused its discretion. There is no indication here that the juvenile court failed to evaluate the criteria in section 3427.

We turn to the merits of mother's motion.

In the absence of treatment and supervision, there is a likelihood that physical and sexual abuse would continue. It appears that California is best suited to protect the minor because it alone has taken action. Moreover, it appears that California has the greater ability to decide the issue expeditiously. Texas, for one reason or another, has chosen to stand on the sidelines. Further, California is the most familiar with the facts and issues in the pending litigation due to its investigation.

Cutting in the opposite direction, the minor was only in California for a week before being detained, she lived in Texas (presumably) for 15 years, and there is great distance between California and Texas, which imposes a financial hardship on mother. Also, it is likely that there is evidence in Texas regarding the minor's upbringing and allegations against stepfather.

On balance, the factors favor California as a forum because it offers the minor protection and a chance at permanency. As a result, we decline to second guess the juvenile court.⁵

⁵ This opinion does not foreclose the juvenile court or the Department from continuing to seek the involvement of the Texas juvenile court, and seeking an Interstate Compact Placement in Texas.

DISPOSITION

The orders are affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD